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In re Application of :
PYZIK, et al. :
U.S. Application No.: 10/551,727 : DECISION ON PETITION
PCT No.: PCT/US04/10837 :
Int. Filing Date: 08 April 2004 : UNDER 37 CFR 1.181
Priority Date: 09 April 2003 :
Attorney Docket No.: 62620A :
For: COMPOSITION FOR MAKING METAL :
MATRIX COMPOSITES :
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This decision is in response to applicant's petition under 37 CFR 1.181 filed 18 December 2008 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 18 November 2008, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.137(a) to revive the present application due to unavoidable abandonment. Applicant was advised to file a petition under 37 CFR 1.181 and accorded two months to file the response.

On 18 December 2008, applicant filed the petition discussed herein.

DISCUSSION

As detailed in the decision mailed 18 November 2008, Official Gazette notice 1156 OG 53 and the Manual of Patent Examining Procedure 711.03(c), explain what is required for a petition under 37 CFR 1.181 requesting relief based upon non-receipt of an office action:

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner **>describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record,

and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm.

Applicant has satisfied all of the items above. In addition, a review of the current submission finds that applicant has included a compliant combined declaration and power of attorney thus satisfying the remaining requirement under 35 U.S.C. 371(c).

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.181 is **GRANTED**.

The Form PCT/DO/EO/909 mailed 15 September 2008 is hereby **VACATED**.

The application has an international filing date of 08 April 2004 under 35 U.S.C. 363 and will be given a date of **18 December 2008** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.



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